

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of RnD  
Aggregator Status: Interaction of  
Competitive Natural Gas Providers,  
Aggregators and Jurisdictional  
Utilities

Application No. NG-0035/PI-115

RESPONSE TO COMMISSION ORDER

In response to the Nebraska Public Service Commission (NPSC) Order dated  
May 2, 2006, Midwest United Energy, LLC (MUE) files the following:

I. COMMUNICATIONS

In accordance with the Commission's Rules of Practice and Procedure,  
communications concerning these proceedings should be addressed to:

James Krebs, CEO  
Midwest United Energy, LLC  
12687 West Cedar Drive, Suite 200  
Lakewood, Colorado 80228

Elisabeth Pendley  
Attorney for Midwest United Energy, LLC  
27453 Mildred Lane  
Evergreen, Colorado 80439  
(303) 674-8092; (303) 674-2515  
[evp@wispertel.net](mailto:evp@wispertel.net)

II. STATEMENT OF INTEREST

MUE is a limited liability company organized under the laws of the State of  
Colorado with its principal place of business at Lakewood, Colorado. MUE is a natural  
gas marketer and was certificated as a competitive natural gas provider on February 3,  
2004 in the state of Nebraska. (Nebraska Revised Statutes, Sections 66-1848 — 66-1849  
(2003 Supp.), and 291 Nebraska Administrative Code, Chapter 9, Rule 009)

### III. RESPONSE

As a certificated competitive natural gas provider, MUE responds as follows to the questions raised by the Nebraska Public Service Commission in its order dated May 2, 2006:

1. Whether the Commission should promulgate rules and regulations to address the relationship between aggregators and suppliers in a customer choice program? If so, what issues should be addressed?

No. The Commission should not promulgate rules and regulations to address the relationship between aggregators and suppliers in the NPSC customer choice program. This relationship should be established by contract between an aggregator and willing natural gas supplier. The terms and conditions of this contractual relationship must be determined by the contractual parties.

MUE views the role of aggregator as an agent, hired by natural gas customers who hope to achieve greater buying power from the supplier when represented by the aggregator in negotiations with the supplier. While MUE is a certificated competitive natural gas supplier, it is not listed on the Nebraska choice gas ballot nor does it serve residential customers. For MUE to be forced to accept aggregator's services would dramatically alter MUE's gas provider status in Nebraska.

However, MUE suggests that the NPSC expand the definition of aggregator found in NPSC Statutes, Section 66-1848 (1) to include an aggregator's Code of Conduct.

This Code of Conduct should address, among other things, the aggregator's status as agent, the relationship between the aggregator and client as well as aggregator and supplier, a prohibition against misquoting or misrepresenting aggregator's services or

cost, a prohibition against false advertising, and a process to bring an aggregator's lack of compliance with these regulations to the NPSC. With an aggregator's Code of Conduct in place, the NPSC will be able to assure natural gas customers appropriate aggregator services.

2. Whether a natural gas supplier can refuse to negotiate with a duly certificated and recognized aggregator on the grounds of fitness to perform the service of an aggregator.

Yes. Even though MUE recognizes that an aggregator who is certificated by the NPSC is fit to perform the service of an aggregator, MUE must still have the ability to refuse to negotiate with a certificated aggregator. Once an aggregator is certified by the NPSC, it has met the threshold qualification to perform. However, MUE must have the freedom to evaluate and to enter into a contractual relationship with an aggregator on its own terms. Because MUE envisions a contractual relationship between the parties, a refusal to negotiate with a duly certificated and recognized NPSC aggregator may result from a number of other objections completely unrelated to its certificated status. A partial list of such contractual issues and concerns are as follows: the aggregator's fees, method and timing of payment expected by the aggregator, confidentiality issues, business reputation of the aggregator, size of residential group, willingness to enter into a contractual relationship. Finally, if the service offered by the aggregator is not financially viable, the natural gas supplier must have the ability to refuse to enter into a contractual relationship with a certificated aggregator.

Generally, it is reasonable for the aggregator to approach suppliers and have executed contracts in place that address the issues raised above before approaching the natural gas customers. Without a contract in place, it is impossible for the aggregator to evaluate the size of the group necessary to achieve the profit margin it seeks, or to predict the cost savings to the customers.

3. Whether failure to honor a customer's choice to use an aggregator's services in a choice gas program constitutes a violation of the non-discrimination clause of the Code of Conduct contained in Kinder Morgan, Inc.'s September 8, 2004 Nebraska Gas Tariff Section 38.2E.

No. Failure to honor a customer's choice to use an aggregator's services in a choice gas program does not constitute a violation of the non-discrimination clause of the Code of Conduct, (KMI Nebraska Gas Tariff Section 38.2E). The NPSC must not regulate a relationship between these two entities. The aggregator is the customer's agent; he is not employed by the supplier. The customer's decision to hire an aggregator does not automatically set in motion an obligation that the supplier must accept. Obviously, the supplier (and not the customer!) will be paying a percentage of its earnings to the aggregator for its aggregation services. If this is not a good business fit, if the supplier is not benefited by the aggregator's services, the aggregator must find another supplier or alter the offer he is making to the supplier to make it more attractive.

4. Whether aggregated pools of customers should be offered bids when not represented by a certificated aggregator.

Absolutely. The volunteer aggregator has been effective in the choice gas program for years. The volunteer aggregator merely “introduces” a group of customers to the supplier, with the expectation that as a group, the customers will benefit from a group rate from the natural gas supplier. If represented by the volunteer aggregator, there will not be a contract between the volunteer aggregator and the supplier and no fee will be paid to the volunteer aggregator for its services. Rather, the supplier will merely sign up the customers at the agreed to group rate.

In addition, a natural gas customer may approach the supplier without the assistance of an aggregator. And further, the natural gas customer must have the ability to opt out of an aggregator’s group if he so chooses.

#### IV. CONCLUSION

THEREFORE, MUE respectfully requests that its responses to the questions raised by the Nebraska Public Service Commission be given due consideration in the Commission’s investigation of the interaction among competitive natural gas providers, jurisdictional utilities, and aggregators.

Dated June 1, 2006.

Respectfully submitted,

Elisabeth Pendley  
Attorney for Midwest United Energy, LLC

ELISABETH PENDLEY  
ATTORNEY AT LAW  
27453 MILDRED LANE  
EVERGREEN, COLORADO 80439

June 1, 2006

Mr. Andrew Pollock  
Executive Director  
Nebraska Public Service Commission  
300 The Atrium  
1200 N Street  
Lincoln, NE 68508

Re: Aggregator Status

Dear Mr. Pollock:

Enclosed please find the original and five paper copies of Response to Commission Order filed by Midwest United Energy, LLC (MUE). Also an electronic copy was e mailed to the Commission as directed in its Order dated May 2, 2006.

Please date stamp the extra paper copy of Response to Commission Order and return it in the self addressed stamped envelope included in this filing.

Sincerely yours,

Elisabeth Pendley